

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VICTOR J. CHAIN, JR., PETER
HAYWARD, GILBERT LEWIS,
ANTHONY L. PLATONI, and OWEN
TAYLOR on behalf of themselves and all
others similarly situated,

Plaintiffs,

ORDER

-against-

16 Civ. 3371 (JCM)

NORTH EAST FREIGHTWAYS, INC.
d/b/a LAND AIR EXPRESS, LAX, LLC and
LAND-AIR EXPRESS OF NEW ENGLAND,
LTD.,

Defendants.

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Trial in this case is set to begin on July 20, 2020. Pursuant to Rule 43(a) of the Federal Rules of Civil Procedure, the current COVID-19 pandemic constitutes compelling circumstances and provides good cause to allow this trial to be conducted remotely through the use of telephonic and video conferencing solutions, especially since neither party wants to adjourn this trial further. Accordingly, after due deliberation, this Court adopts the following virtual hearing procedures which provide appropriate safeguards in relation to the trial of this matter.

IT IS HEREBY ORDERED THAT:

1. Telephonic and Video Conferencing Solutions. The trial shall take place virtually using both telephonic and video conferencing solutions as set forth herein. All counsel who participate in the trial shall participate in appropriate pre-trial technology testing as may be required by further order of the Court.

2. **Access.** No later than July 8, 2020 at 5:00 p.m., the parties shall provide to the Court via ECF a list of all (a) attorneys participating in the trial, along with their phone numbers and email addresses, and (b) witnesses who will participate in the trial.

The public is invited to attend the trial on a non-speaking basis by utilizing a dial-in number that will be provided on the docket.

3. **Remote Witness Testimony.** Rule 43(a) of the Federal Rules of Civil Procedure provides that, for “good cause in compelling circumstances,” a witness may be permitted to testify by contemporaneous transmission from a location other than the courtroom. Having found that good cause in compelling circumstances exist here due to the COVID-19 pandemic, any witness called to testify at the trial shall testify by contemporaneous transmission from a different location than the courtroom (“Remote Witness”). When called to testify, a Remote Witness must situate himself or herself in such a manner as to be able to view the video screen and be seen by the Court. Remote Witnesses must testify in a room that is quiet and not subject to any outside disturbances. All Remote Witnesses shall be sworn in over remote means, and such testimony will have the same effect and be binding upon the Remote Witness in the same manner as if such Remote Witness was sworn in by the Courtroom Deputy in person in open court at the Courthouse.

The party offering the Remote Witness shall be responsible for ensuring that the Remote Witness has been sufficiently trained in using the remote video conferencing software prior to trial. No person other than counsel may be present in the room from which any Remote Witness will testify during that witness’s testimony. While the Remote Witness is testifying, he or she may not have any documents in the room from which the Remote Witness is testifying. Remote Witnesses will be shown all exhibits through the video conferencing software.

Remote Witnesses proffered by each side shall join the video conference only during the time they are testifying. Upon the conclusion of his or her testimony, the witness shall disconnect from, and not reconnect to, the proceeding. Remote witnesses are prohibited from listening to any portion of the trial through any means when not testifying.

4. **Submission of Exhibits.** By July 13, 2020, (1) all exhibits that will be used at trial shall be saved on a USB drive and mailed to the undersigned, and (2) all deposition transcripts that will be used at trial shall be e-mailed to Chambers at the following e-mail address: McCarthy_NYSDchambers@nysd.uscourts.gov.

5. **Courtroom Formalities.** Although being conducted using video conferencing solutions, the trial constitutes a court proceeding, and any recording other than the official court version is prohibited. No party may record images or sounds from any location. The formalities of a courtroom must be observed.

Dated: July 8, 2020
White Plains, New York

SO ORDERED:



JUDITH C. MCCARTHY
United States Magistrate Judge